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MINUTES
AUGUST 8, 2008

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:07a.m., on Friday August 30, 2008, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present Via Telephone: Chairman Joseph Russell, Heidi Kaiser, Don Marble, Larry Mires, Bill Rossbach, and Robin Shropshire.

Board Members Not Present: Gayle Skunkcap

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Kris Brewer

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director; Jane Amdahl, John North, David Rusoff, and Carol Schmidt, Legal; John Arrigo, Enforcement Division; Judy Hanson, Permitting and Compliance Division (PCD); Chuck Homer, Dave Klemp, and Eric Merchant PCD Air Resources Management Bureau; Rachel Clark, Jon Dilliard, Shelley Nolan, and Eugene Pizzini PCD Public Water Supply and Subdivision Bureau; Art Compton

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Don Allen, Western Environmental Trade Association

- I.A.1. Review and approve May 30, 2008, meeting minutes.
- Mr. Rossbach MOVED to approve the May 30, 2008, meeting minutes. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE (Ms. Shropshire not present yet).
- II.A. Mr. Livers briefed the board on the background of the letter the Board received from the EQC and relayed highlights of the EQC discussion regarding the Board's actions in the SME case in regards to rulemaking.
- Mr. Rossbach requested that the department present a briefing at a future meeting addressing the pros and cons of possible rulemaking.
- II.B.1.e In the matter of the appeal by CHS Inc. regarding it's Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.
- Hearing Examiner Katherine Orr informed the Board that the parties have submitted a stipulation for dismissal and it will be presented to the Board at the October meeting.
- Hearing Examiner Katherine Orr informed the Board that BER 2007-07 AQ has been appealed, in part, by MEIC to district court on the matter of the CO₂ regulation. The department is the respondent in the case.
- Ms. Orr also informed the Board that BER 2006-18 AQ has been appealed, in part, to district court. TRC is appealing two May 30, 2008, motions by the Board regarding major stationary source and bad actor status. The Board is the respondent in the case. Ms. Shropshire joined the meeting during this report.
- II.B.1.d In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.
- Hearing Examiner Katherine Orr informed the Board that this case is still on the books.
- II.B.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.
- II.B.1.b In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.B.1.c In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.
- II.B.1.f In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-

27 AQ.

II.B.1.g In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.

II.B.1.h In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.

Ms. Orr had no further information beyond that provided in the agenda for items II.B.1.a – c, and f - h.

III.C.1 In the matter of violations of the appeal by Plum Creek Manufacturing, Inc. of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.

III.C.2 In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).

III.C.3 In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.

III.C.4 In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).

The Board decided to take no action at this time on III.C.1 – 4. Ms. Orr will remain as the interim hearing examiner.

II.C.5 In the matter of violations of the opencut mining act by TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Rossbach MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.1 In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Mires MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.2 In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Rossbach MOVED. Ms. Shropshire SECONDED the motion. The

- motion CARRIED with a unanimous VOTE.
- III.D.3 In the matter of violations of the Montana Water Quality Act by 48 North, Pc. at Spring Creek Estates Subdivision, Kalispell, Montana, BER 2007-21 WQ.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Mires MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.D.4 In the matter of violations of the Montana Underground Storage Tank Act by CStore, Inc. at S and S Foods, Superior, Montana, BER 2008-03 UST.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.D.5 In the matter of appeal of March 11, 2008, letter by Schellenger Construction Co., Inc. and Tutvedt Family Partnership at the Tutvedt 2 Mine Site , Flathead County, Montana, BER 2008-04 OC.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV. Public Comment
- Chairman Russell called for general public comment. No one responded.
- Mr. Livers informed the Board that the Board Secretary was approached by Montana Public Television regarding televising future BER meetings. In order to accommodate the televising of the meetings, the meetings will need to be held at the capitol, except for two meetings every other year during legislature. This may start as soon as the October meeting.
- VI. Adjournment
- Chairman Russell called for a motion to adjourn. Mr. Rossbach MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- The meeting adjourned at 9:57 a.m. on August 8, 2008.

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

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